

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF DEPARTMENT OF FISH, WILDLIFE AND PARKS  
GRIEVANCE NO. 2-2013:

FRANK H. BOWEN,	)	Case No. 760-2013
	)	
Grievant,	)	
	)	
vs.	)	<b>FINAL PRE-HEARING ORDER</b>
	)	
MONTANA DEPARTMENT OF	)	
FISH, WILDLIFE AND PARKS,	)	
	)	
Defendant.	)	

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Hearing Officer Terry Spear held a telephone final pre-hearing conference on May 24, 2013, and now issues this final pre-hearing order. This order determines the scope of permissible testimony, exhibits, and other evidence, except for good cause shown or because exclusion of the evidence would result in manifest injustice.

**I. HEARING DATE, TIME, AND LOCATION**

Hearing on this grievance convenes on June 11, 2013, 8:30 a.m., local time, in the large meeting room within the offices of the defendant, Department of Fish, Wildlife & Parks (FWP), at 490 North Meridian Road, Kalispell, Montana. The parties will make their best good faith efforts to conclude the hearing that same day. Should it be necessary, the hearing will convene again at 8:30 a.m., local time, the next calendar day, to complete any unfinished evidentiary presentations necessary to conclude the hearing. Bowen will find out whether the large meeting room will be available on June 12, 2013, should it be needed, and advise the Hearings Bureau and counsel for FWP as soon as possible. Should the large meeting room not be available on June 12, 2013, the Hearings Bureau will contact both parties and arrange to find another hearing room for any proceedings necessary on June 12, 2013. Post-hearing submissions are addressed in Section IX herein.

**II. ISSUE AND HEARING AUTHORITY**

The issue is whether the grievant, Frank H. Bowen, is aggrieved by a serious matter in his employment. Mont. Code Ann. § 87-1-205. The Board of Personnel Appeals has jurisdiction. Mont. Code Ann. §§ 87-1-205, 2-18-1011 through 1813. The parties do not contest the jurisdiction of the Board over this matter.

The hearing officer will conduct the hearing in accordance with the Montana Administrative Procedure Act, Mont. Code Ann. Title 2, Chapter 4, Part 6. The hearing will afford the parties a full opportunity to present evidence relevant to the issue to be determined, for submission of a hearing officer recommended decision to the Board. All formal hearing testimony will be taken under oath or affirmation and recorded.

### **III. STIPULATED FACTS**

1. Bowen's date of hire with FWP is December 1, 1984.

### **IV. BOWEN'S CONTENTIONS AND REQUESTED RELIEF**

1. On January 26, 2012, FWP intervened in an ongoing criminal investigation being conducted by Region One FWP Enforcement Officers. Wardens were told that intervention was ordered by the FWP Director's Office, and was being done for "political reasons." Allowing politics to set the direction of an investigation is a clear ethics violation. The date directed to complete and deliver all case reports, and the desire to keep those reports decentralized, set the investigation on track for the eventual complaint against Warden Bowen.

2. On March 1, 2012, Lake County Attorney Mitch Young filed a complaint alleging incompetence and felony violations on the part of Warden Frank Bowen. At the direction of FWP LE Chief Kropp, Warden Captain Jeff Darrah investigated that complaint. Captain Darrah determined in April 2012 that Young's allegations were unfounded. Captain Darrah alleged that through his investigation he discovered that Lake County Attorney Mitch Young committed Criminal Misconduct, Obstructed Justice, and Tampered with a Witness in an ongoing FWP investigation. For unknown reasons, FWP classified that investigative report and has failed to report the allegations contained within that report, and subsequent allegations, to the appropriate authorities. Warden Bowen has been threatened with termination/disciplinary action, if he reports those allegations. This directive placed Warden Bowen in the position of either violating his code of ethics, and possibly the law, or being terminated by FWP. It is important to know that the allegations against Lake County Attorney Mitch Young were made by Captain Jeff Darrah and are not allegations made by Warden Bowen.

3. On April 20, 2012, the Montana Senate Law and Justice Committee requested that FWP appear before a hearing to discuss the Lake County Investigation, which had spawned Mitch Young's complaint against Warden Bowen. Warden Bowen made requests to disseminate the investigation conducted by Captain Darrah, but was told that information could not be released until after the Senate Hearing. Bowen protested this decision and a statement was added to a Timeline prepared by FWP for that hearing which said Warden Bowen had been cleared of any wrongdoing, but nothing else. Warden Bowen asked for permission to disseminate a

letter by Chief Kropp that exonerated Bowen of any wrongdoing, but was again directed not to disseminate that letter until after the Senate Hearing. Warden Bowen protested that decision stating the letter was part of Bowen's personnel file. By prohibiting Warden Bowen from disseminating documents in Bowen's own personnel file, documents that were not criminal justice information, FWP likely violated Bowen's civil rights and intentionally allowed damage to Bowen's reputation to occur. If it can be shown that FWP once again did this for political reasons, that directive could constitute a human rights violation.

4. Warden Bowen, although present for the April 2012 Senate Hearing, was instructed by the FWP Director's Office not to appear/testify. This aggravated the Senate Committee and drew negative comments, statewide, regarding Warden Bowen's failure to appear in newspapers and on televised news programs. Warden Bowen's reputation has suffered from this and subsequent FWP directives. Warden Bowen made many requests of his supervisors to correct the negative and misleading publicity but all were ignored. The adverse impacts on Warden Bowen's reputation and career were brought to the attention of the Director's Office by Bowen's supervisors, and still no actions were taken until after the filing of this grievance. Warden Bowen's reputation and credibility has suffered from FWP indifference and intentional inaction.

5. Warden Bowen's failure to testify at the April 2012 Senate Hearing caused the Senate Committee to subpoena Bowen for the June 2012 Senate Hearing. On June 21, 2012, Warden Bowen was directed to attend a pre-hearing conference call in Kalispell with FWP decision makers and the Director's Office. That meeting was changed to a one-on-one meeting between Warden Bowen and Regional Supervisor Jim Satterfield. Other FWP employees had advised Warden Bowen that Supervisor Satterfield had a history of trying to intimidate employees during these one-on-one meetings. With that in mind, Warden Bowen requested the presence of an immediate supervisor at that meeting, and Captain Anderson complied with that request. During that June 21, 2012 meeting, Supervisor Satterfield made several verbal comments intended to intimidate Warden Bowen into an altered testimony before the Senate Hearing. Captain Anderson agreed with Warden Bowen after that meeting and again at his deposition that the comments made by Supervisor Satterfield should not have been made. Captain Anderson possessed neither the courage nor the desire to report those statements to FWP hierarchy. During this June 21, 2012 meeting, Supervisor Satterfield once again invoked political concerns stating, "Are you willing to fall on your sword just to make the Democratic Party look bad?" Through the statements made by FWP supervisors, and the deliberate inaction of Warden Bowen's immediate supervisor, FWP violated its own policies, Warden Bowen's civil and human rights, and committed a Workplace Violence offense as defined by OSHA.

6. On June 22, 2012, Warden Bowen met in Helena with FWP Chief Kropp and FWP Attorney Jakes-Doctor, just prior to Bowen's testimony before the Senate Hearing. At that meeting Warden Bowen informed those present of the inappropriate comments and/or attempts to intimidate made by Supervisor Satterfield the day before. According to subpoenaed documents, that conversation was reported to the FWP Director. Warden Bowen was informed at this meeting that he did not have to honor the Senate subpoena. FWP Attorney Jakes-Doctor stated that since the subpoena was directed to Warden Frank Bowen, she could appear for him. Warden Bowen turned that offer down, assuming that if such a procedure were legally defensible, Bowen would once again be the fall guy. Warden Bowen's testimony before the Senate Hearing received much press coverage, which included more slanderous comments from Lake County public officials. This coverage was harmful to Warden Bowen's reputation and career, so Bowen once again asked FWP to address the harmful statements, which had been made in the press. FWP refused to do so. In the defendant's documents submitted during the grievance procedure, FWP has stated that they did not believe those public statements to have been injurious. Yet during the depositions, all of Warden Bowen's supervisors agreed that those statements were harmful. Warden Bowen made many requests to his immediate supervisors for relief, yet FWP stated in discovery that they were not aware of any requests. It was not until after this grievance was filed that any effort was made by FWP to correct the misconceptions.

7. Prior to July 27, 2012, Warden Bowen made several requests of his supervisors to report the allegations of criminal activity on the part of Lake County Attorney Mitch Young and MHP Sergeant Randy Owens to the appropriate authorities as required by Montana law and the Peace Officers Code of Ethics. His supervisors informed Warden Bowen that FWP was considering reporting those violations to the Attorney General's Office, but no decision had been made yet. Warden Bowen informed his supervisors that if FWP did not forward the information regarding those allegations, he, Warden Bowen, was planning to do so on July 27, 2012. Warden Bowen informed his supervisors of his intention to share those allegations with MHP Colonel Toole, the Office of Disciplinary Counsel, and the Attorney General's Office. On July 27, 2012, Warden Bowen filed complaints with MHP and ODC stating that a subpoena would be needed to release the Report of Investigation done by Captain Darrah in which the allegations were made. FWP considered that document to be criminal justice information and to this date has refused to release that document to the appropriate investigative agency or the Senate. Before Warden Bowen could prepare the documents to advise the Attorney General's Office of the allegations, FWP ordered Bowen not to do so under penalty of termination. Warden Bowen was initially told he could make whatever complaints he wished as a private citizen but not as a State Game Warden. Bowen expressed his intention to do so, and was soon advised that doing so would be considered insubordination, and grounds for termination. This virtual gag order by FWP has

put Warden Bowen at odds with state law and the Peace Officers Code of Ethics directive to report allegations of criminal misconduct to the appropriate authorities.

8. On August 14, 2012, Warden Bowen was temporarily reassigned from the Polson District to the Region One DNRC Warden position. This reassignment was directed in a poorly written letter, which found its way to the press. Although the letter stated the reassignment was not disciplinary in nature, the average person reading it would not likely read it that way. In fact, Warden Bowen received many contacts from friends, acquaintances, and co-workers asking what he was doing since being fired by FWP. Warden Bowen made requests of his supervisors to correct this misconception, but no real efforts were made on the part of FWP until after Bowen filed a grievance. This reassignment and failure to correct misleading media articles could be seen as retaliation and efforts to discredit Warden Bowen on the part of FWP. Although that reassignment letter seems to acknowledge Warden Bowen's right to disclose allegations of criminal activity as a private citizen, and assist POST in their related investigation, Bowen was immediately directed by his supervisors that to do so would be grounds for termination. Subpoenaed documents show the POST attorney discussed Warden Bowen's personnel issues and reassignment with FWP. It is not known if that effected the POST investigations, but replacing the lead investigator at the eleventh hour certainly had to make successful prosecution more difficult. This is demonstrated by the fact that when POST investigators came to Lake County to do follow-up interviews in that investigation, they interviewed the wrong witnesses. Considering that POST Director Wayne Ternes lost his job over this investigation, it is easy to conclude that FWP withdrew its resources in an effort to see those investigations go away. One FWP investigation alleging felony witness tampering on the part of two Polson Police Officers made its way thru the POST Council, and a conviction of sorts was obtained. Those officers received a virtual slap on the wrist for their misdeeds.

9. On September 18, 2012, Warden Bowen received a letter from Supervisor Satterfield clarifying a verbal warning Bowen had received directing Bowen not to release any information regarding the independent allegations made against public officials. That letter rescinds the authority Warden Bowen previously had to work with POST regarding ongoing investigations into suspect law enforcement officers, and informed Warden Bowen of FWP intentions to stop the ODC investigation into independent allegations against Lake County Attorney Mitch Young. It was learned through the discovery process that Supervisor Satterfield had tried to get Warden Bowen suspended or terminated, even though the consensus supported a verbal warning at best. Review of the State progressive disciplinary policy demonstrates that those disciplinary options are on opposite ends of the spectrum. It was also learned that Supervisor Satterfield had misrepresented statements made by Warden Bowen during the verbal warning in what appears to be an attempt to discredit Bowen and require a psychological review. As the grievance procedure continued,

Supervisor Satterfield filed an internal FWP complaint against Warden Bowen in an apparent attempt to stop Bowen from getting other FWP employees with experiences similar to Bowen's June 21, 2012 meeting from testifying in the grievance. All of these activities represent a pattern of harassment and retaliation and support the idea that FWP intended to damage Bowen's reputation. Warden Bowen was asked to come to the Kalispell office to speak with supervisors over his temporary reassignment and "how we mis-communicated" about filing a complaint. It was not until that meeting was well underway that Warden Bowen was told the true purpose of the meeting was to gather evidence and determine if disciplinary action was warranted. Warden Bowen protested that deception during that meeting, and in writing. That sort of deception is clearly in violation of state policy.

10. On December 21, 2012, Warden Bowen became aware that a District Court Order used as evidence by Lake County Attorney Mitch Young to explain why he gave criminal justice information/case reports to the suspects in those investigations (Local Law Enforcement Officers) was likely fraudulent. Warden Bowen reported this information/allegation to his supervisors. Warden Bowen requested that allegation be reported to the appropriate authority/jurisdiction. Warden Bowen was directed not to report the allegation and told that if he, Bowen, did report it, he, Bowen, would be guilty of gross insubordination. It was learned through the discovery process that FWP has failed to forward that information once again creating ethical and possible legal issues.

11. On October 8, 2012, Warden Bowen and the records regarding the Lake County Investigation were subpoenaed in a Federal RICO suit. Warden Bowen was directed to produce and send the subpoenaed documents to FWP legal staff. Warden Bowen was notified that FWP needed to represent him in this issue for the good of the department and the good of Warden Bowen. Warden Bowen produced 65 pounds of documents and recordings, which were sent to FWP legal staff. Warden Bowen appeared for a deposition with FWP legal representation on November 12, 2012. Little was discussed at that deposition as FWP had filed a motion to protect those documents from discovery. On December 21, 2012, a Federal Magistrate ruled against FWP's motion and ordered the documents released. Warden Bowen continued to forward any documents he believed to be covered by subpoena to FWP legal staff, but was eventually directed to send them directly to the plaintiff in the suit. That plaintiff contacted Warden Bowen to tell Bowen that they could not find key documents in the files delivered. Those key documents included the Report of Investigation completed by Captain Darrah and the allegation made by Captain Darrah against Lake County Attorney Mitch Young. In his response to ODC regarding the complaint filed by Warden Bowen, Mitch Young made some obvious errors in fact. ODC sent Warden Bowen a letter advising Bowen he had a specific period of time to challenge the statements made by Mitch Young. Warden Bowen pointed out the factual errors made by Mitch Young to his supervisors, but FWP

directed Warden Bowen not to reply to that letter under threat of termination. FWP then used those knowingly false documents/statements in their rebuttal to the grievance filed by Warden Bowen. This action further perpetuated those false statements and represents yet another effort to discredit Warden Bowen. On March 6, 2013, Warden Bowen was deposed for over 4 hours regarding the RICO suit. FWP did not send representation for Warden Bowen to that deposition, even though it was discovered through subpoenaed documents that Assistant Attorney General Barb Harris informed FWP that it was a very serious situation and urged them to make sure Warden Bowen had representation, and was not asked to go it alone. Key to the defense inquiries during that deposition were the news articles Warden Bowen had asked FWP to address. Those articles included the August 14, 2012 Warden Bowen Temporary Reassignment letter written by FWP supervisors. Defense counsel believed that letter made it clear that Warden Bowen had been removed as the Polson District Warden due to poor performance and lack of credibility. FWP showed total lack of concern for the truth and for the well-being of Warden Bowen and Bowen's reputation in this issue. If this, too, was done for "political reasons," it is another possible human rights violation.

12. On January 28, 2013, FWP forcibly and permanently reassigned Warden Bowen from the Polson Warden District. Warden Bowen was advised of this forcible move via e-mail at 1807 hours on the evening of January 28, and received the statewide advertisement to fill his vacant position at 0950 hours on the morning of January 29. That reassignment and the total lack of professionalism and respect are considered by the complainant to be the retaliation Warden Bowen was warned of at the June 21, 2012 meeting. Documents released during discovery show that Warden Bowen's immediate supervisors believed that this forcible reassignment would be harmful to Bowen's reputation and career, and was not in keeping with FWP past practices for Game Wardens. FWP appears to have made that reassignment either with total disregard for Warden Bowen's well-being, or with the intent to do harm. This alleged retaliation could be considered a human rights violation.

13. The actions and inactions of FWP have damaged Warden Bowen's career and reputation. Threats of termination and thoughts of starting a new career at this point in Warden Bowen's life were stressful. However, the damage to his reputation will be hard, if not impossible, to repair. For example, at the Warden Seminar this May, Warden Bowen found himself again trying to explain to some of his fellow Game Wardens that he had not been forced to another agency or stripped of his Peace Officer status. After 28 years of service to the State of Montana, and with a spotless service record, he finds this a bitter pill to swallow. In the final analysis, Warden Bowen wants "things to be the way they were," but knowing that is not possible, he submits the following relief request.

14. Warden Bowen seeks a written statement from FWP acknowledging that it is not within "legitimate management directives" for supervisors to direct

employees to tell less than the truth or the whole truth, and acknowledging that threats of losing one's job are intimidating in nature and are not to be used outside of the guidelines established in the progressive disciplinary policy. He further seeks acknowledgment that in this case, the statements made to Warden Bowen were inappropriate, and should not have been made.

15. Warden Bowen seeks a written statement from FWP that truthfully reflects his FWP service record and performance while serving as Warden Sergeant and the Polson District Warden and that apologizes for any misleading or inadequate statements that were construed by many as unflattering and damaging to Bowen's reputation. He requests that this written statement be placed in my personnel file and that FWP expressly acknowledge that this written statement is Warden Bowen's property, to disseminate as he sees fit.

16. Warden Bowen will not accept these statements as his relief unless and until he approves their specific content.

17. Warden Bowen also seeks an award of the expenses he incurred during this grievance procedure, consisting of postage and court reporter fees totaling an amount of \$1,328.31, which he requests be donated to the Montana Game Warden Association.

18. If he obtains the relief sought, Warden Bowen is willing to release any Human Rights Claims he might assert arising out of the matters involved in this grievance.

## **V. FWP'S CONTENTIONS AND REQUESTED RELIEF**

1. A FWP employee who has been aggrieved by a serious matter of employment based upon work conditions, supervision, or as the result of an administrative action may seek a hearing before the Board of Personnel Appeals. Mont. Code Ann. § 87-1-205. The burden is upon the employee to show that he has been aggrieved. If the preponderant evidence demonstrated that the employee has been aggrieved, the Board may issue an order to FWP to require action to resolve the grievance. Mont. Code Ann. § 87-1-205.

2. Legislative issues are within the domain of FWP management and not non-management employees, therefore Grievant's appearance before a Legislative Committee is subject to management scrutiny and is not the prerogative of an employee particularly when the employee is in uniform.

3. The decision to reassign Grievant was a management prerogative pursuant to Mont. Code Ann. § 39-31-303(2) – the right to reassign because he was subjected to difficult working conditions in Lake County.

4. Grievant's wages stayed the same after the reassignment as they were before the reassignment.



5. The June 21, 2012 meeting was a conversation for the purpose of helping Grievant understand the FWP position on a legislative issue and that Grievant should follow the direction of the FWP Chief Legal Counsel, Rebecca Jakes-Dockter, when he appeared the next day before the Interim Legislative Law and Justice Committee.

6. The June 22, 2012 pre-meeting with Frank Bowen was for the purpose of giving him guidance on how to respond to a subpoena he received compelling his attendance at the Interim Law and Justice Committee June 22, 2012. At that time he was informed that he should not represent to the committee, under the auspices of a Department Warden, his personal opinions about how to address what he thought were problems and that he was not authorized to speak on behalf of the Department.

7. A separate, but equally important issue that was discussed at the June 22, 2012 pre-meeting with Frank Bowen was regarding the content of a confidential criminal justice investigative report which was criminal justice information that was legally required to be kept confidential.

8. Subsequent interactions between the Grievant and Captain Lee Anderson concerning withholding the dissemination of a report containing Criminal Justice Information were viewed by FWP management as necessary under the Montana Criminal Justice Information Act of 1979.

9. In addition to the management prerogative having to do with legislative issues, FWP management has determined that criminal and ethical prosecution of non-fish and wildlife offenses is also within the domain of management and not individual employees. For that reason, ODC and MHP complaints filed by Bowen were in violation of this prerogative and furthermore against the advice of FWP management. It was felt by Supervisor Satterfield and other FWP management that Grievant's ODC and MHP complaints lacked specific evidence of any wrongdoing on the part of the Lake County Attorney as well as the local law enforcement officers. As a matter of fact, Grievant was given an oral warning by FWP management for filing those complaints without the authorization of FWP management. The ODC complaint was dismissed for lack of evidence.

10. In summary, the remainder of Grievant's accusations as contained in this grievance are representative of his tendency to reach conclusions without first uncovering evidence of wrongdoing and providing a specific factual basis to support those conclusions and for that reason the employer respectfully requests that this Grievance be denied in its entirety.

## **VI. EXHIBITS**

The exhibits listed on the following pages (10-16) exhibits may be offered into evidence by any party:

- Exhibit 1 Game Warden Frank Bowen Performance Appraisal for 2006 consisting of 9 Pages
- Exhibit 2 Game Warden Frank Bowen Performance Appraisal for 2007 consisting of 8 Pages
- Exhibit 3 Game Warden Frank Bowen Performance Appraisal for 2008 consisting of 3 pages
- Exhibit 4 Game Warden Frank Bowen Performance Appraisal for 2009 consisting of 4 Pages
- Exhibit 5 Game Warden Frank Bowen Performance Appraisal for 2010 consisting of 4 Pages
- Exhibit 6 Game Warden Frank Bowen Performance Appraisal for 2011 consisting of 4 Pages
- Exhibit 7 Game Warden Frank Bowen Performance Appraisal for 2012 consisting of 5 Pages
- Exhibit 8 State Discipline Handling Guide consisting of 37 pages plus a 1 page e-mail and 4 page supplement from FWP Administrator Dave Risley
- Exhibit 9 Defendants Responses to Interrogatives consisting of 8 pages
- Exhibit 10 FWP Director Maurier April 20 2012 letter to Law and Justice committee with Captain Anderson notes
- Exhibit 11 Affidavit of POST Director Clayton Coker dated 15 March 2013 and consisting of 3 pages with a 1 page attachment of 23.13.203 ARM
- Exhibit 12 FWP Safety and Health Policy consisting of 17 pages plus 1 page OSHA Workplace Violence information sheet
- Exhibit 13 Employee Grievance submitted by Warden Frank Bowen and dated 24 September 2012. This packet includes the step 1 and step 2 responses and Preliminary Decision a total of 21 pages.
- Exhibit 14 08 April 2013 Deposition of Warden Sergeant Jon Obst
- Exhibit 15 08 April 2013 Deposition of Warden Sergeant Nathan Reiner
- Exhibit 16 08 April 2013 Deposition of Warden Captain Lee Anderson
- Exhibit 17 08 April 2013 Deposition of Regional Supervisor Jim Satterfield
- Exhibit 18 02 July 2012 E-mail from Commission of Political Practices Investigator Julie Steab and 03 July 2012 forward to Captain Anderson regarding Lake County Mitch Young indiscretions. Consisting of 2 pages.

- Exhibit 19 08 December 2012 E-mail/posting in the Missoula Independent and forwarded to Captain Anderson regarding Lake County Attorney Mitch Young indiscretions and consisting of 1 page.
- Exhibit 20 25 November 2011 E-mail from Detective Steve Kendle and forwarded to Captain Anderson regarding Lake County Sheriffs Office dissemination of a questionable Boating Death Investigation to Lake County Commissioner Bill Barron. Consisting of 1 page.
- Exhibit 21 16 December 2011 E-mail from Warden Bowen to Public Defender Steve Eschenbacher and forwarded to Captain Anderson regarding the perjury of a Tribal Officer in District Court during a Felony DUI case involving Lake County Attorney Mitch Young. Consisting of 2 pages.
- Exhibit 22 06 March 2013 Valley Journal newspaper article regarding District Court Judge CB McNeil's public reprimand of Lake County Attorney Mitch Young for making false statements. Consisting of 4 pages.
- Exhibit 23 Investigative report dated 05 January 2012 regarding upcoming 26 January 2012 Swan Meeting with attached Officer notes. Consisting of 3 pages.
- Exhibit 24 17 January 2012 E-mail string from Captain Anderson to Warden Bowen regarding the 26 January 2012 meeting in the Swan.
- Exhibit 25 March 2012 Report of Investigation into a complaint filed by Lake County Attorney Mitch Young against Warden Frank Bowen. Consisting of 33 pages and 2 recordings.
- Exhibit 26 Updated Montana Legislative Judicial Committee Testimony Notes drafted for April 16 2012 Senate Hearing. Consisting of 12 pages.
- Exhibit 27 20 April 2012 letter from FWP Director to Law and Justice Committee with FWP Timeline condensed for Senate Hearing. Consisting of 3 pages.
- Exhibit 28 10 April 2012 E-mail from Captain Anderson directing Warden Bowen not to disseminate the Chief Kropp exoneration letter.
- Exhibit 29 16 April 2012 E-mail from Captain Anderson directing Warden Bowen not to disseminate Chief Kropp's letter exonerating Bowen in Mitch Young complaint at the April 2012 Senate Hearing.

- Exhibit 30 21 June 2012 E-mail from Warden Bowen asking a supervisor to be present for directed meeting with Supervisor Satterfield
- Exhibit 31 21 June 2012 e-mail from Captain Anderson giving Warden Bowen direction for Senate Hearing.
- Exhibit 32 21 June 2012 e-mail from Supervisor Satterfield advising Helena staff about that days meeting with Warden Bowen. Attached memorandums from Captain Anderson and Supervisor Satterfield. Consisting of 3 pages.
- Exhibit 33 Memo to file by Warden Bowen regarding notes from 21 June 2012 pre senate hearing meeting
- Exhibit 34 Amateur transcription of Attorney Jakes-Doctor testimony at the 22 June Senate Hearing
- Exhibit 35 4 May 2012 Legislative Subpoena for Warden Bowen
- Exhibit 36 05 December 2012 e-mail from Supervisor Satterfield to R-1 staff regarding clarification on Warden Bowen's August Temporary reassignment
- Exhibit 37 28 November 2012 rebuttal by FWP of Frank Bowen grievance with attachments. Consisting of 11 pages.
- Exhibit 38 25 July 2012 e-mail from Captain Anderson regarding Warden Bowen's statement of his plan to file a complaint on 27 July 2012 if FWP was not planning to. Consisting of 2 pages.
- Exhibit 39 13 July 2012 letter from Captain Anderson to Senator Shockley with attached letters regarding Warden Bowen's exoneration. Consisting of 4 pages
- Exhibit 40 29 June 2012 e-mail from Warden Bowen sending the entire timeline given to Captain Anderson before the April Senate Hearing, and requesting FWP give the Mitch Young complaint and Captain Darrah investigative report to the Senate Committee as promised at the June 2012 hearing.
- Exhibit 41 ODC complaint cover sheet and letter from Warden Bowen regarding report of allegations made by Captain Darrah. Attached copy of Warden Bowen letter to MHP regarding Sergeant Randy Owens. Consisting of 5 pages.
- Exhibit 42 17 January 2013 e-mail from Captain Anderson regarding concerns Warden Bowen had forwarded to his supervisors about Assistant Chief Korn and Admin Specialist Sue Tomas.
- Exhibit 43 14 August 2012 Temporary reassignment letter from Captain Anderson.

- Exhibit 44 07 September 2012 newspaper exerts regarding Warden Bowen's reassignment.
- Exhibit 45 16 April 2012 e-mail from Captain Anderson directing Bowen not to share exoneration letter from Chief Kropp.
- Exhibit 46 11 May 2013 e-mail from a citizen reporting other FWP personnel publicly telling her how FWP was screwing Warden Bowen.
- Exhibit 47 24 January 2012 e-mail forwarded to Captain Anderson from a Sanders County Detective regarding assistant AG displeasure that the AG's Office did not take any of the cases FWP gave them in the Lake County investigation.
- Exhibit 48 29 August 2012 e-mail from Captain Anderson regarding corrections needed to a press article.
- Exhibit 49 Warden Bowen nomination for integrity award by Captain Anderson
- Exhibit 50 31 August 2012 e-mail from Warden Bowen regarding his concerns about how press coverage is hurting his reputation and Captain Anderson's 04 September response. Consisting of 4 pages.
- Exhibit 51 18 September 2012 letter from Supervisor Satterfield regarding Warden Bowen verbal warning and further direction. Consisting of 2 pages.
- Exhibit 52 18 September 2012 e-mail between Captain Anderson and supervisor Satterfield regarding whether Warden Bowen ever received certain e-mails.
- Exhibit 53 27 thru 28 September 2012 e-mails regarding the transfer of information from Warden Bowen to Helena legal staff in support of RICO subpoena.
- Exhibit 54 05 April 2013 e-mail from Julie Sanders regarding a complaint filed against Warden Bowen by Supervisor Satterfield and related documents in that complaint. Consisting of 14 pages.
- Exhibit 55 03 August 2012 e-mail from Supervisor Satterfield regarding the temporary reassignment of Warden Bowen with note regarding public disclosure of e-mail communications.
- Exhibit 56 18 September 2012 e-mail from Captain Anderson regarding concerns not to violate Warden Bowen's civil rights
- Exhibit 57 05 September 2012 e-mail from Supervisor Satterfield, which is attached to packet of information used to

- determine disciplinary action against Warden Bowen.  
Consists of 15 pages.
- Exhibit 58 Notes from Captain Anderson note book.
- Exhibit 59 04 March 2013 e-mail from Captain Anderson regarding why Warden Bowen was looking for a copy of the Peace Officers Code of Ethics
- Exhibit 60 08 November 2012 report from ODC to Warden Bowen regarding the complaint filed against Lake County Attorney Mitch Young. Attached is Mitch Young's response to the complaint to include the alleged bogus District Court Order. Consisting of 13 pages.
- Exhibit 61 24 December 2012 email request from Warden Bowen to disclose allegations that Lake County Attorney Mitch Young submitted fraudulent documents to ODC. Consisting of 4 pages.
- Exhibit 62 25 November 2012 email request from Warden Bowen to appeal ODC decision and share Captain Darrah report of investigation into complaint filed by Mitch Young. Consisting of 2 pages.
- Exhibit 63 02 December 2012 email request by Warden Bowen that Supervisor Satterfield send clarification on his temporary reassignment to all R-1 employees.
- Exhibit 64 21 December 2012 email from Warden Bowen regarding Federal Court order to release subpoenaed materials and notification Bowen no longer has control over those documents.
- Exhibit 65 19 September 2012 e-mail from Chief Kropp stating AAG Barb Harris concerns that Warden Bowen have legal representation at RICO deposition. Consisting of 2 pages.
- Exhibit 66 06 December 2012 email from Warden Bowen requesting guidance on what looked to be documents diverted from RICO subpoena to the grievance step 3 rebuttal. Consisting of 3 pages.
- Exhibit 67 28 January 2013 letter by Captain Anderson regarding permanent reassignment of Warden Bowen with related communications. Consisting of 4 pages.
- Exhibit 68 29 January 2013 advertisement of the Warden Position Bowen was removed from the day before and related emails. Consisting of 3 pages.
- Exhibit 69 23 January 2013 email from Sergeant Reiner stating he does not support the reassignment of Warden Bowen,

- Captains Anderson's response and the forward of those concerns to Supervisor Satterfield. Consisting of 4 pages.
- Exhibit 70 25 January 2013 email from Sergeant Reiner questioning verbiage in Warden Bowen reassignment letter
- Exhibit 71 02 March 2012 letter from Warden Bowen requesting they investigate the complaint made against Bowen by Lake County attorney Mitch Young, and email response from Captain Anderson. Consisting of 2 pages.
- Exhibit 72 28 April 2012 email from Warden Bowen regarding the negative press he was receiving since failing to appear at the April Senate Hearing
- Exhibit 73 29 April 2012 email from captain Anderson asking FWP to set the record straight due to incorrect media coverage.
- Exhibit 74 02 May 2012 email from Warden Bowen asking FWP to set the record straight.
- Exhibit 75 26 May 2012 email from Warden Bowen asking FWP to file charges in the Mitch Young complaint
- Exhibit 76 04 June 2012 email from Warden Bowen informing FWP of the latest threat
- Exhibit 77 15 June 2012 email from Warden Bowen informing FWP about a televised report that defamed Bowen
- Exhibit 78 Undated email from Warden Bowen informing FWP of allegations Lake County Attorney Mitch Young used a fraudulent court order in his defense to ODC
- Exhibit 79 03 July 2012 email from Warden Bowen asking FWP to investigate allegations against Lake County Attorney Mitch Young. Consisting of 3 pages.
- Exhibit 80 18 July 2012 email from Warden Bowen requesting FWP investigate allegations against Lake County Attorney Mitch Young. Consisting of 3 pages.
- Exhibit 81 25 July 2012 email from Captain Anderson informing FWP of Warden Bowen's request for investigation.
- Exhibit 82 03 August 2012 email from Captain Anderson advising FWP of possible civil rights violations
- Exhibit 83 29 August 2012 email from POST attorney regarding her discussions on Warden Bowen's personnel investigation and reassignment
- Exhibit 84 30 August 2012 email from Captain Anderson directing Warden Bowen to have reporters contact FWP John Fraley
- Exhibit 85 01 September email from Warden Bowen regarding a neighbor's concern over media coverage

- Exhibit 86 04 September 2012 email from Captain Anderson asking FWP to decide if Warden Bowen can speak to the media regarding his reassignment.
- Exhibit 87 12 September 2012 email from Warden Bowen to FWP with a sample of the questions Bowen was getting regarding Bowen's reassignment. Consists of 2 pages.
- Exhibit 88 14 September 2012 letter from ODC asking Bowen to examine the response of Lake County Attorney Mitch Young to see if it is factually correct.
- Exhibit 89 26 November 2012 email from Captain Anderson forwarding ODC response information to FWP. Consisting of 9 pages.
- Exhibit 90 03 December 2012 letter from Supervisor Satterfield to ODC
- Exhibit 91 29 January 2013 email from Warden Bowen asking if Captain Anderson ever looked into concern FWP attorney may have diverted confidential ODC information to the grievance step 3 rebuttal
- Exhibit 92 17 February 2013 email from Warden Bowen informing FWP that citizens were of the opinion Warden Bowen had been fired
- Exhibit 93 24 February 2013 email from Warden Bowen informing FWP that Bowen was told by a Tribal elder that the Tribal Council/Tribal attorneys lead him to believe that Warden Bowen had been terminated for his performance on the Flathead Reservation.
- Exhibit 94 10 April 2012 email from Captain Anderson directing Warden Bowen not to disseminate the Chief Kropp letter regarding the Mitch Young complaint report of investigation with anyone.
- Exhibit 95 16 April 2012 email from Captain Anderson informing Warden Bowen the Chief Kropp letter will not be disseminated without a freedom of information request
- Exhibit A Satterfield Fact Finding Report.
- Exhibit B String of emails leading to oral warning.
- Exhibit C Written Summary of Oral Warning dated September 18, 2012
- Exhibit D Office of Disciplinary Counsel Letter dated November 8, 2012.
- Exhibit E Lee Anderson 2012 Performance Review

The hearing officer may exclude exhibits if they are cumulative or unlisted. The parties may propose proper impeachment or rebuttal exhibits. The parties may



ask permission to introduce additional exhibits to prevent a manifest injustice or for good cause shown.

## **VII. WITNESSES**

Bowen's witnesses are:

Regional Supervisor Jim Satterfield  
Warden Sergeant Nathan Reiner  
Warden Captain Lee Anderson  
Game Warden Charles Bartos  
Fisheries Technician John Wachsmuth  
Game Warden/Complainant Frank Bowen

FWP's witnesses are:

Rebecca Jakes-Dockter  
Jim Satterfield  
Jim Kropp  
Julie Sanders  
Frank H. Bowen  
Dave Risley  
Lee Anderson  
Jon Obst  
Nathan Reiner  
Rick Schoening  
Randy Owen  
Levi Reed  
Mitch Young  
Greg Kraft

The hearing officer may exclude witness testimony or other evidence if it is cumulative or unlisted. The parties may call proper impeachment or rebuttal witnesses not listed. The parties may call witnesses identified by the opponent if those witnesses are present or immediately available. The parties may ask permission to call additional witnesses to prevent a manifest injustice or for good cause shown.

If Bowen calls a witness in his case in chief whom FWP wishes to call in its case in chief, then FWP may either (1) Cross-examine the witness regarding testimony elicited by Bowen and also (without asking leading questions) elicit all additional testimony that it would otherwise seek from the witness in its direct examination in its case in chief or (2) Forego cross-examination and call the witness in its case in chief.

## VIII. CONFIDENTIALITY

There may be confidentiality issues at hearing. The hearing is a public proceeding, and the record of the hearing as well as the decision are public records. If a party intends to refer on the record, by questions, argument, testimony, tangible evidence or otherwise, to matter which may be private or confidential as to any person or entity, that party should first give notice, for consideration and ruling upon any right of privacy or confidentiality, before the matter is part of the record. Once matter is made part of the public record, it ordinarily cannot thereafter be withdrawn from that record and sealed from the public.

## IX. POST-HEARING PROCEEDINGS

The evidentiary record in this case will close at the end of the hearing. Bowen must file and serve his proposed decision and supporting brief by close of business on July 12, 2013. FWP must file and serve its proposed decision and supporting brief by close of business on August 12, 2013. Bowen must file and serve any reply brief in support of his proposed decision that he elects to file (this filing is optional) by close of business on September 6, 2013. The requirements for electronic as well as paper filing and service that appear on the first page of the scheduling order in this case still apply to these post-hearing filings.

Upon timely filing and service of any reply brief from Bowen, or upon receipt by the Hearings Bureau of notice from Bowen that he has elected not to file any reply brief, or upon expiration of the time for filing of any reply brief without such a brief being filed and served, whichever of the three events occurs first, the Hearing Officer will deem this matter submitted for him to complete and issue his proposed decision for the Board of Personnel Appeals.

DATED this 24<sup>th</sup> day of May, 2013.

BOARD OF PERSONNEL APPEALS

By:

  
\_\_\_\_\_  
Terry Spear  
Hearing Officer

\* \* \* \* \*

## CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by depositing them in the U.S. Mail, postage prepaid, and addressed as follows:

Frank Bowen  
P.O. Box 967  
Marion, MT 59925

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by means of the State of Montana's Interdepartmental mail service.

Jack Lynch, Legal Counsel  
Montana Department of Fish, Wildlife and Parks  
P.O. Box 200701  
Helena, MT 59620

DATED this 24<sup>th</sup> day of May, 2013.

Sandy Duncan

